

1 AN ACT relating to abortion.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 156.496 is amended to read as follows:

- 4 (1) Family resource and youth services centers shall be designed to meet the needs of  
5 children and their families by providing services to enhance a student's ability to  
6 succeed in school. If resources are limited, students and families who are the most  
7 economically disadvantaged shall receive priority status for receiving services.
- 8 (2) Family resource centers shall be located in or near each elementary school in the  
9 Commonwealth in which twenty percent (20%) or more of the student body are  
10 eligible for free or reduced-price school meals. Family resource centers shall  
11 promote identification and coordination of existing resources and shall include but  
12 not be limited to the following core components for each site:
- 13 (a) Full-time preschool child care for children two (2) and three (3) years of age;
  - 14 (b) After-school child care for children ages four (4) through twelve (12), with  
15 the child care being full-time during the summer and on other days when  
16 school is not in session;
  - 17 (c) Families in training, which shall consist of an integrated approach to home  
18 visits, group meetings, and monitoring child development for new and  
19 expectant parents;
  - 20 (d) Family literacy services as described in KRS 158.360 or a similar program  
21 designed to provide opportunities for parents and children to learn together  
22 and promote lifelong learning; and
  - 23 (e) Health services or referrals to health services, or both.
- 24 (3) Youth services centers shall be located in or near each school in the  
25 Commonwealth, except elementary schools, in which twenty percent (20%) or more  
26 of the student body are eligible for free or reduced-price school meals. Youth  
27 services centers shall promote identification and coordination of existing resources

1 and shall include but not be limited to the following core components for each site:

2 (a) Referrals to health and social services;

3 (b) Career exploration and development;

4 (c) Summer and part-time job development for high school students;

5 (d) Substance abuse education and counseling; and

6 (e) Family crisis and mental health counseling.

7 (4) A grant program is hereby established to provide financial assistance to eligible  
8 school districts to establish or maintain family resource or youth services centers.  
9 The Cabinet for Health and Family Services shall award grants pursuant to KRS  
10 156.4977. Funding provided to the Cabinet for Health and Family Services for the  
11 grant program and agency administrative costs shall include an increase that is  
12 equal to or greater than the general fund growth factor provided in agency budget  
13 instructions.

14 (5) A family resource or youth services center that receives funding for one (1) year or  
15 more shall not be considered ineligible for funding based solely on the percent of  
16 the student body eligible for free or reduced-price school meals unless the percent  
17 of the student body eligible for free or reduced-price school meals is below twenty  
18 percent (20%) for five (5) consecutive years.

19 (6) ~~[A school district shall not operate a family resource center or a youth services  
20 center that provides abortion counseling or makes referrals to a health care facility  
21 for the purpose of seeking an abortion.]~~

22 ~~(7)~~ A school district may accept monetary donations for the operation and  
23 maintenance of family resource and youth services centers. Any donations given to  
24 the school district for the operation and maintenance of family resource and youth  
25 services centers shall be used only for the operation and maintenance of family  
26 resource and youth services centers, and for no other purpose.

27 ➔Section 2. KRS 211.603 is amended to read as follows:

- 1 (1) There is created a trust fund to be known as the rape crisis center trust fund. The  
2 fund shall be administered by the Cabinet for Health and Family Services.
- 3 (2) The trust fund shall be funded with moneys collected through the designation of a  
4 taxpayer's refund as provided by KRS 141.447 and any contributions, gifts,  
5 donations, or appropriations designated for the trust fund. Moneys in the fund shall  
6 be used to support the services listed in KRS 211.600(3).~~[No moneys in the fund  
7 shall be used to support abortion services or abortion education.]~~
- 8 (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the  
9 fiscal year shall not lapse but shall be carried forward into the succeeding fiscal  
10 year to be used for the purposes set forth in subsection (2) of this section.
- 11 (4) Any interest earned upon moneys in the rape crisis center trust fund shall become a  
12 part of the fund and shall not lapse.
- 13 (5) Moneys deposited in the fund are appropriated for the purposes set forth in this  
14 section and shall not be appropriated or transferred by the General Assembly for  
15 any other purposes.
- 16 ➔Section 3. KRS 216B.400 is amended to read as follows:
- 17 (1) Where a person has been determined to be in need of emergency care by any person  
18 with admitting authority, no such person shall be denied admission by reason only  
19 of his or her inability to pay for services to be rendered by the hospital.
- 20 (2) Every hospital of this state which offers emergency services shall provide that a  
21 physician, a sexual assault nurse examiner, who shall be a registered nurse licensed  
22 in the Commonwealth and credentialed by the Kentucky Board of Nursing as  
23 provided under KRS 314.142, or another qualified medical professional, as defined  
24 by administrative regulation promulgated by the Justice and Public Safety Cabinet  
25 in consultation with the Sexual Assault Response Team Advisory Committee as  
26 defined in KRS 403.707, is available on call twenty-four (24) hours each day for the  
27 examinations of persons seeking treatment as victims of sexual offenses as defined

1 by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120,  
2 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.

3 (3) An examination provided in accordance with this section of a victim of a sexual  
4 offense may be performed in a sexual assault examination facility as defined in  
5 KRS 216B.015. An examination under this section shall apply only to an  
6 examination of a victim.

7 (4) The physician, sexual assault nurse examiner, or other qualified medical  
8 professional, acting under a statewide medical forensic protocol which shall be  
9 developed by the Justice and Public Safety Cabinet in consultation with the Sexual  
10 Assault Response Team Advisory Committee as defined in KRS 403.707, and  
11 promulgated by the secretary of justice and public safety pursuant to KRS Chapter  
12 13A shall, upon the request of any peace officer or prosecuting attorney, and with  
13 the consent of the victim, or upon the request of the victim, examine such person  
14 for the purposes of providing basic medical care relating to the incident and  
15 gathering samples that may be used as physical evidence. This examination shall  
16 include but not be limited to:

17 (a) Basic treatment and sample gathering services; and

18 (b) Laboratory tests, as appropriate.

19 (5) Each victim shall be informed of available services for treatment of sexually  
20 transmitted infections, pregnancy, and other medical and psychiatric problems.  
21 ~~[Pregnancy counseling shall not include abortion counseling or referral~~  
22 ~~information.]~~

23 (6) Each victim shall be informed of available crisis intervention or other mental health  
24 services provided by regional rape crisis centers providing services to victims of  
25 sexual assault.

26 (7) Notwithstanding any other provision of law, a minor may consent to examination  
27 under this section. This consent is not subject to disaffirmance because of minority,

1 and consent of the parents or guardians of the minor is not required for the  
2 examination.

3 (8) (a) The examinations provided in accordance with this section shall be paid for  
4 by the Crime Victims Compensation Board at a rate to be determined by the  
5 administrative regulation promulgated by the board after consultation with the  
6 Sexual Assault Response Team Advisory Committee as defined in KRS  
7 403.707.

8 (b) Upon receipt of a completed claim form supplied by the board and an  
9 itemized billing for a forensic sexual assault examination or related services  
10 that are within the scope of practice of the respective provider and were  
11 performed no more than twelve (12) months prior to submission of the form,  
12 the board shall reimburse the hospital or sexual assault examination facility,  
13 pharmacist, health department, physician, sexual assault nurse examiner, or  
14 other qualified medical professional as provided in administrative regulations  
15 promulgated by the board pursuant to KRS Chapter 13A. Reimbursement  
16 shall be made to an out-of-state nurse who is credentialed in the other state to  
17 provide sexual assault examinations, an out-of-state hospital, or an out-of-  
18 state physician if the sexual assault occurred in Kentucky.

19 (c) Independent investigation by the Crime Victims Compensation Board shall  
20 not be required for payment of claims under this section; however, the board  
21 may require additional documentation or proof that the forensic medical  
22 examination was performed.

23 (9) No charge shall be made to the victim for sexual assault examinations by the  
24 hospital, the sexual assault examination facility, the physician, the pharmacist, the  
25 health department, the sexual assault nurse examiner, other qualified medical  
26 professional, the victim's insurance carrier, or the Commonwealth.

27 (10) (a) Each victim shall have the right to determine whether a report or other

1 notification shall be made to law enforcement, except where reporting of  
2 abuse and neglect of a child or a vulnerable adult is required, as set forth in  
3 KRS 209.030 and 620.030. No victim shall be denied an examination because  
4 the victim chooses not to file a police report, cooperate with law enforcement,  
5 or otherwise participate in the criminal justice system.

6 (b) If the victim chooses to report to law enforcement, the hospital shall notify  
7 law enforcement within twenty-four (24) hours.

8 (c) 1. All samples collected during an exam where the victim has chosen not  
9 to immediately report to law enforcement shall be stored, released, and  
10 destroyed, if appropriate, in accordance with an administrative  
11 regulation promulgated by the Justice and Public Safety Cabinet in  
12 consultation with the Sexual Assault Response Team Advisory  
13 Committee as defined in KRS 403.707.

14 2. Facilities collecting samples pursuant to this section may provide the  
15 required secure storage, sample destruction, and related activities, or  
16 may enter into agreements with other agencies qualified to do so,  
17 pursuant to administrative regulation.

18 3. All samples collected pursuant to this section shall be stored for at least  
19 one (1) year from the date of collection in accordance with the  
20 administrative regulation promulgated pursuant to this subsection.

21 4. Notwithstanding KRS 524.140, samples collected during exams where  
22 the victim chose not to report immediately or file a report within one (1)  
23 year after collection may be destroyed as set forth in accordance with  
24 the administrative regulation promulgated pursuant to this subsection.  
25 The victim shall be informed of this process at the time of the  
26 examination. No hospital, sexual assault examination facility, or  
27 designated storage facility shall be liable for destruction of samples after

1 the required storage period has expired.

2 →Section 4. KRS 311.723 is amended to read as follows:

- 3 (1) No abortion shall be performed except by a physician after~~either~~:
- 4 (a) He or she determines that, in his or her best clinical judgment, the abortion is  
5 necessary; ~~or~~
- 6 (b) He or she receives what he or she reasonably believes to be a written  
7 statement signed by another physician, hereinafter called the "referring  
8 physician," certifying that in the referring physician's best clinical judgment  
9 the abortion is necessary, and, in addition, he or she receives a copy of the  
10 report form required by KRS 213.101; or
- 11 (c) He or she reasonably believes the pregnant woman is pregnant as a result of  
12 rape or incest.
- 13 (2) No abortion shall be performed except in compliance with regulations which the  
14 cabinet shall issue to ensure that:
- 15 (a) Before the abortion is performed, the pregnant woman shall have a private  
16 medical consultation either with the physician who is to perform the abortion  
17 or with the referring physician in a place, at a time and of a duration  
18 reasonably sufficient to enable the physician to determine whether, based  
19 upon his or her best clinical judgment, the abortion is necessary;
- 20 (b) The physician who is to perform the abortion or the referring physician will  
21 describe the basis for his or her best clinical judgment that the abortion is  
22 necessary on a form prescribed by the cabinet as required by KRS 213.101;  
23 and
- 24 (c) Paragraph (a) of this subsection shall not apply when, in the medical judgment  
25 of the attending physician based on the particular facts of the case before him  
26 or her, there exists a medical emergency. In such a case, the physician shall  
27 describe the basis of his or her medical judgment that an emergency exists on

1 a form prescribed by the cabinet as required by KRS 213.101.

2 (3) Notwithstanding any statute to the contrary, nothing in this chapter shall be  
3 construed as prohibiting a physician from prescribing or a woman from using birth  
4 control methods or devices, including, but not limited to, intrauterine devices, oral  
5 contraceptives, or any other birth control method or device.

6 ➔Section 5. KRS 311.725 is amended to read as follows:

7 (1) No abortion shall be performed or induced except with the voluntary and informed  
8 written consent of the woman upon whom the abortion is to be performed or  
9 induced. Except in the case of a medical emergency *or a pregnant woman who is*  
10 *reasonably believed to be pregnant as a result of rape or incest*, consent to an  
11 abortion is voluntary and informed if and only if:

12 (a) At least twenty-four (24) hours prior to the abortion, a physician, licensed  
13 nurse, physician assistant, or social worker to whom the responsibility has  
14 been delegated by the physician has verbally informed the woman of all of the  
15 following:

- 16 1. The nature and purpose of the particular abortion procedure or treatment  
17 to be performed and of those medical risks and alternatives to the  
18 procedure or treatment that a reasonable patient would consider material  
19 to the decision of whether or not to undergo the abortion;
- 20 2. The probable gestational age of the embryo or fetus at the time the  
21 abortion is to be performed;
- 22 3. The medical risks associated with the pregnant woman carrying her  
23 pregnancy to term; and
- 24 4. The potential ability of a physician to reverse the effects of prescription  
25 drugs intended to induce abortion, where additional information about  
26 this possibility may be obtained, and contact information for assistance  
27 in locating a physician who may aid in the reversal;

- 1 (b) At least twenty-four (24) hours prior to the abortion, in an individual, private  
2 setting, a physician, licensed nurse, physician assistant, or social worker to  
3 whom the responsibility has been delegated by the physician has informed the  
4 pregnant woman that:
- 5 1. The cabinet publishes the printed materials described in subsection  
6 (2)(a), (b), and (c) of this section and that she has a right to review the  
7 printed materials and that copies will be provided to her by the  
8 physician, licensed nurse, physician assistant, or social worker free of  
9 charge if she chooses to review the printed materials;
  - 10 2. Medical assistance benefits may be available for prenatal care,  
11 childbirth, and neonatal care, and that more detailed information on the  
12 availability of such assistance is contained in the printed materials  
13 published by the cabinet;
  - 14 3. The father of the fetus is liable to assist in the support of her child, even  
15 in instances where he has offered to pay for the abortion; and
  - 16 4. It is illegal in Kentucky to intentionally perform an abortion, in whole or  
17 in part, because of:
    - 18 a. The sex of the unborn child;
    - 19 b. The race, color, or national origin of the unborn child; or
    - 20 c. The diagnosis, or potential diagnosis, of Down syndrome or any  
21 other disability;
- 22 (c) At least twenty-four (24) hours prior to the abortion, a copy of the printed  
23 materials has been provided to the pregnant woman if she chooses to view  
24 these materials;
- 25 (d) The pregnant woman certifies in writing, prior to the performance or  
26 inducement of the abortion:
- 27 1. That she has received the information required to be provided under

- 1 paragraphs (a), (b), and (c) of this subsection; and
- 2 2. That she consents to the particular abortion voluntarily and knowingly,
- 3 and she is not under the influence of any drug of abuse or alcohol; and
- 4 (e) Prior to the performance or inducement of the abortion, the physician who is
- 5 scheduled to perform or induce the abortion or the physician's agent receives a
- 6 copy of the pregnant woman's signed statement, on a form which may be
- 7 provided by the physician, on which she consents to the abortion and that
- 8 includes the certification required by paragraph (d) of this subsection.
- 9 (2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface
- 10 not less than 12 point type the following materials:
- 11 (a) Materials that inform the pregnant woman about public and private agencies
- 12 and services that are available to assist her through her pregnancy, upon
- 13 childbirth, and while her child is dependent, including, but not limited to,
- 14 adoption agencies. The materials shall include a comprehensive list of the
- 15 available agencies and a description of the services offered by the agencies
- 16 and the telephone numbers and addresses of the agencies, and inform the
- 17 pregnant woman about available medical assistance benefits for prenatal care,
- 18 childbirth, and neonatal care and about the support obligations of the father of
- 19 a child who is born alive. The cabinet shall ensure that the materials are
- 20 comprehensive and do not directly or indirectly promote, exclude, or
- 21 discourage the use of any agency or service described in this section;
- 22 (b) Materials that inform the pregnant woman of the probable anatomical and
- 23 physiological characteristics of the zygote, blastocyte, embryo, or fetus at two
- 24 (2) week gestational increments for the first sixteen (16) weeks of her
- 25 pregnancy and at four (4) week gestational increments from the seventeenth
- 26 week of her pregnancy to full term, including any relevant information
- 27 regarding the time at which the fetus possibly would be viable. The materials

1 shall use language that is understandable by the average person who is not  
2 medically trained, shall be objective and nonjudgmental, and shall include  
3 only accurate scientific information about the zygote, blastocyte, embryo, or  
4 fetus at the various gestational increments. The materials shall include, for  
5 each of the two (2) of four (4) week increments specified in this paragraph, a  
6 pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus.  
7 The materials shall also include, in a conspicuous manner, a scale or other  
8 explanation that is understandable by the average person and that can be used  
9 to determine the actual size of the zygote, blastocyte, embryo, or fetus at a  
10 particular gestational increment as contrasted with the depicted size of the  
11 zygote, blastocyte, embryo, or fetus at that gestational increment; and

12 (c) Materials that inform the pregnant woman of the potential ability of a  
13 physician to reverse the effects of prescription drugs intended to induce  
14 abortion, where additional information about this possibility may be obtained,  
15 and contact information for assistance in locating a physician who may aid in  
16 the reversal.

17 (3) Upon submission of a request to the cabinet by any person, hospital, physician, or  
18 medical facility for one (1) or more copies of the materials published in accordance  
19 with subsection (2) of this section, the cabinet shall make the requested number of  
20 copies of the materials available to the person, hospital, physician, or medical  
21 facility that requested the copies.

22 (4) If a medical emergency or medical necessity compels the performance or  
23 inducement of an abortion, the physician who will perform or induce the abortion,  
24 prior to its performance or inducement if possible, shall inform the pregnant woman  
25 of the medical indications supporting the physician's judgment that an immediate  
26 abortion is necessary. Any physician who performs or induces an abortion without  
27 the prior satisfaction of the conditions specified in subsection (1) of this section

1 because of a medical emergency or medical necessity shall enter the reasons for the  
2 conclusion that a medical emergency exists in the medical record of the pregnant  
3 woman.

4 (5) If the conditions specified in subsection (1) of this section are satisfied, consent to  
5 an abortion shall be presumed to be valid and effective.

6 (6) The failure of a physician to satisfy the conditions of subsection (1) of this section  
7 prior to performing or inducing an abortion upon a pregnant woman may be the  
8 basis of disciplinary action pursuant to KRS 311.595.

9 (7) The cabinet shall charge a fee for each copy of the materials distributed in  
10 accordance with subsections (1) and (3) of this section. The fee shall be sufficient to  
11 cover the cost of the administration of the materials published in accordance with  
12 subsection (2) of this section, including the cost of preparation and distribution of  
13 materials.

14 ➔Section 6. KRS 311.727 is amended to read as follows:

15 (1) As used in this section:

16 (a) "Auscultate" means to examine by listening for sounds made by internal organs  
17 of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound  
18 transducer or a fetal heart rate monitor;

19 (b) "Obstetric ultrasound" or "ultrasound" means the use of ultrasonic waves for  
20 diagnostic or therapeutic purposes, specifically to monitor a developing fetus;  
21 and

22 (c) "Qualified technician" means a medical imaging technologist as defined in  
23 KRS 311B.020 who is certified in obstetrics and gynecology by the American  
24 Registry for Diagnostic Medical Sonography or a nurse midwife or advance  
25 practice nurse practitioner in obstetrics with certification in obstetrical  
26 ultrasonography.

27 (2) Prior to a woman giving informed consent to having any part of an abortion

1 performed, the physician who is to perform the abortion or a qualified technician to  
2 whom the responsibility has been delegated by the physician shall:

- 3 (a) Perform an obstetric ultrasound on the pregnant woman;
- 4 (b) Provide a simultaneous explanation of what the ultrasound is depicting, which  
5 shall include the presence and location of the unborn child within the uterus  
6 and the number of unborn children depicted and also, if the ultrasound image  
7 indicates that fetal demise has occurred, inform the woman of that fact;
- 8 (c) Display the ultrasound images so that the pregnant woman may view the  
9 images;
- 10 (d) Ascultate the fetal heartbeat of the unborn child so that the pregnant woman  
11 may hear the heartbeat if the heartbeat is audible;
- 12 (e) Provide a medical description of the ultrasound images, which shall include  
13 the dimensions of the embryo or fetus and the presence of external members  
14 and internal organs, if present and viewable; and
- 15 (f) Retain in the woman's medical record a signed certification from the pregnant  
16 woman that she has been presented with the information required to be  
17 provided under paragraphs (c) and (d) of this subsection and has viewed the  
18 ultrasound images, listened to the heartbeat if the heartbeat is audible, or  
19 declined to do so. The signed certification shall be on a form prescribed by the  
20 cabinet.
- 21 (3) When the ultrasound images and heartbeat sounds are provided to and reviewed  
22 with the pregnant woman, nothing in this section shall be construed to prevent the  
23 pregnant woman from averting her eyes from the ultrasound images or requesting  
24 the volume of the heartbeat be reduced or turned off if the heartbeat is audible.  
25 Neither the physician, the qualified technician, nor the pregnant woman shall be  
26 subject to any penalty if the pregnant woman refuses to look at the displayed  
27 ultrasound images or to listen to the heartbeat if the heartbeat is audible.

- 1 (4) The requirements of this section shall be in addition to any requirement contained  
2 in KRS 311.725 or any other section of KRS 311.710 to 311.820.
- 3 (5) The provisions of this section shall not apply in the case of a medical emergency or  
4 medical necessity, or in the case of a pregnant woman reasonably believed to be  
5 pregnant as the result of rape or incest. If a medical emergency or medical  
6 necessity compels the performance or inducement of an abortion, the physician who  
7 will perform or induce the abortion, prior to its performance or inducement if  
8 possible, shall inform the pregnant woman of the medical indications supporting the  
9 physician's judgment that an immediate abortion is necessary. Any physician who  
10 performs or induces an abortion without the prior satisfaction of the requirements of  
11 this section because of a medical emergency or medical necessity shall enter the  
12 reasons for the conclusion that a medical emergency or medical necessity exists in  
13 the medical record of the pregnant woman.

14 ➔Section 7. KRS 311.735 is amended to read as follows:

- 15 (1) Prior to performing an abortion, the physician who is to perform the abortion or his  
16 or her agent shall notify, if reasonably possible, the spouse of the woman upon  
17 whom the abortion is to be performed. If it is not reasonably possible to notify the  
18 spouse prior to the abortion, the physician or his or her agent shall do so, if  
19 reasonably possible, within thirty (30) days of the abortion.
- 20 (2) (a) The requirements of this section shall not apply if, before the abortion is  
21 performed, either party to a marriage has filed a petition for dissolution of  
22 marriage which has been served on the respondent. ~~and~~
- 23 (b) The requirements of this section shall not apply when, in the medical  
24 judgment of the attending physician based on the particular facts of the case  
25 before him or her, there exists a medical emergency. In such a case, the  
26 physician shall describe the basis of his or her medical judgment that such an  
27 emergency exists on a form prescribed by the cabinet as required by KRS

1           213.101, and the physician or his or her agent shall notify, if reasonably  
2           possible, the spouse of the woman upon whom the abortion was performed,  
3           within thirty (30) days of the abortion.

4           (c) The requirements of this section shall not apply when the pregnant woman  
5           is reasonably believed to be pregnant as the result of rape or incest.

6           (3) Failure to notify a spouse as required by this section is prima facie evidence of  
7           interference with family relations in appropriate civil actions. The law of this  
8           Commonwealth shall not be construed to preclude the award of punitive damages or  
9           damages for emotional distress, even if unaccompanied by physical complications  
10          in any civil action brought pursuant to violations of this section. Nothing in this  
11          section shall be construed to limit the common law rights of a husband.

12          ➔Section 8. KRS 311.7704 is amended to read as follows:

13          (1) (a) A person who intends to perform or induce an abortion on a pregnant woman  
14               shall determine whether there is a detectable fetal heartbeat of the unborn  
15               human individual the pregnant woman is carrying. The method of determining  
16               the presence of a fetal heartbeat shall be consistent with the person's good-  
17               faith understanding of standard medical practice, provided that if  
18               administrative regulations have been promulgated under subsection (2) of this  
19               section, the method chosen shall be one that is consistent with the regulations.

20          (b) The person who determines the presence or absence of a fetal heartbeat shall  
21               record in the pregnant woman's medical record the estimated gestational age  
22               of the unborn human individual, the method used to test for a fetal heartbeat,  
23               the date and time of the test, and the results of the test.

24          (c) The person who performs the examination for the presence of a fetal heartbeat  
25               shall give the pregnant woman the option to view or hear the fetal heartbeat.

26          (2) The secretary of the Cabinet for Health and Family Services may promulgate  
27          administrative regulations specifying the appropriate methods of performing an

1 examination for the purpose of determining the presence of a fetal heartbeat of an  
2 unborn human individual based on standard medical practice. The regulations shall  
3 require only that an examination shall be performed externally.

4 (3) A person is not in violation of subsection (1) or (2) of this section if:

5 (a) The person has performed an examination for the purpose of determining the  
6 presence of a fetal heartbeat of an unborn human individual utilizing standard  
7 medical practice;

8 (b) The examination does not reveal a fetal heartbeat or the person has been  
9 informed by a physician who has performed the examination for a fetal  
10 heartbeat that the examination did not reveal a fetal heartbeat; and

11 (c) The person notes in the pregnant woman's medical records the procedure  
12 utilized to detect the presence of a fetal heartbeat.

13 **(4) The requirements of this section shall not apply when the pregnant woman is**  
14 **reasonably believed to be pregnant as the result of rape or incest.**

15 ➔Section 9. KRS 311.7705 is amended to read as follows:

16 (1) Except as provided in subsection (2) of this section, no person shall intentionally  
17 perform or induce an abortion on a pregnant woman before determining in  
18 accordance with KRS 311.7704(1) whether the unborn human individual the  
19 pregnant woman is carrying has a detectable fetal heartbeat.

20 (2) (a) Subsection (1) of this section shall not apply to a physician who performs or  
21 induces the abortion if the physician believes that a medical emergency exists  
22 that prevents compliance with subsection (1) of this section.

23 (b) A physician who performs or induces an abortion on a pregnant woman based  
24 on the exception in paragraph (a) of this subsection shall make written  
25 notations in the pregnant woman's medical records of both of the following:

26 1. The physician's belief that a medical emergency necessitating the  
27 abortion existed; and

1           2. The medical condition of the pregnant woman that prevented  
2           compliance with subsection (1) of this section.

3           The physician shall maintain a copy of the notations in the physician's own  
4           records for at least seven (7) years from the date the notations were made.

5           **(c) Subsection (1) of this section shall not apply when the pregnant woman is**  
6           **reasonably believed to be pregnant as the result of rape or incest.**

7           (3) A person is not in violation of subsection (1) of this section if the person acts in  
8           accordance with KRS 311.7704(1) and the method used to determine the presence  
9           of a fetal heartbeat does not reveal a fetal heartbeat.

10          (4) A pregnant woman on whom an abortion is intentionally performed or induced in  
11          violation of subsection (1) of this section is not guilty of violating subsection (1) of  
12          this section or of attempting to commit, conspiring to commit, or complicity in  
13          committing a violation of subsection (1) of this section. In addition, the pregnant  
14          woman is not subject to a civil penalty based on the abortion being performed or  
15          induced in violation of subsection (1) of this section.

16          ➔Section 10. KRS 311.7706 is amended to read as follows:

17          (1) Except as provided in subsection (2) of this section, no person shall intentionally  
18          perform or induce an abortion on a pregnant woman with the specific intent of  
19          causing or abetting the termination of the life of the unborn human individual the  
20          pregnant woman is carrying and whose fetal heartbeat has been detected in  
21          accordance with KRS 311.7704(1).

22          (2) (a) Subsection (1) of this section shall not apply to a physician who performs a  
23          medical procedure that, in the physician's reasonable medical judgment, is  
24          designed or intended to prevent the death of the pregnant woman or to prevent  
25          a serious risk of the substantial and irreversible impairment of a major bodily  
26          function of the pregnant woman.

27          (b) A physician who performs a medical procedure as described in paragraph (a)

1 of this subsection shall, in writing:

2 1. Declare that the medical procedure is necessary, to the best of the  
3 physician's reasonable medical judgment, to prevent the death of the  
4 pregnant woman or to prevent a serious risk of the substantial and  
5 irreversible impairment of a major bodily function of the pregnant  
6 woman; and

7 2. Specify the pregnant woman's medical condition that the medical  
8 procedure is asserted to address and the medical rationale for the  
9 physician's conclusion that the medical procedure is necessary to  
10 prevent the death of the pregnant woman or to prevent a serious risk of  
11 the substantial and irreversible impairment of a major bodily function of  
12 the pregnant woman.

13 (c) The physician shall place the written document required by paragraph (b) of  
14 this subsection in the pregnant woman's medical records. The physician shall  
15 maintain a copy of the document in the physician's own records for at least  
16 seven (7) years from the date the document is created.

17 **(d) Subsection (1) of this section shall not apply when the pregnant woman is**  
18 **reasonably believed to be pregnant as the result of rape or incest.**

19 (3) A person is not in violation of subsection (1) of this section if the person acts in  
20 accordance with KRS 311.7704(1) and the method used to determine the presence  
21 of a fetal heartbeat does not reveal a fetal heartbeat.

22 (4) A pregnant woman on whom an abortion is intentionally performed or induced in  
23 violation of subsection (1) of this section is not guilty of violating subsection (1) of  
24 this section or of attempting to commit, conspiring to commit, or complicity in  
25 committing a violation of subsection (1) of this section. In addition, the pregnant  
26 woman is not subject to a civil penalty based on the abortion being performed or  
27 induced in violation of subsection (1) of this section.

1 (5) Subsection (1) of this section shall not repeal or limit any other provision of the  
2 Kentucky Revised Statutes that restricts or regulates the performance or inducement  
3 of an abortion by a particular method or during a particular stage of a pregnancy.

4 ➔Section 11. KRS 311.772 is amended to read as follows:

5 (1) As used in this section:

6 (a) "Fertilization" means that point in time when a male human sperm penetrates  
7 the zona pellucida of a female human ovum;

8 (b) "Pregnant" means the human female reproductive condition of having a living  
9 unborn human being within her body throughout the entire embryonic and  
10 fetal stages of the unborn child from fertilization to full gestation and  
11 childbirth; and

12 (c) "Unborn human being" means an individual living member of the species  
13 homo sapiens throughout the entire embryonic and fetal stages of the unborn  
14 child from fertilization to full gestation and childbirth.

15 (2) The provisions of this section shall become effective immediately upon, and to the  
16 extent permitted, by the occurrence of any of the following circumstances:

17 (a) Any decision of the United States Supreme Court which reverses, in whole or  
18 in part, *Roe v. Wade*, 410 U.S. 113 (1973), thereby restoring to the  
19 Commonwealth of Kentucky the authority to prohibit abortion; or

20 (b) Adoption of an amendment to the United States Constitution which, in whole  
21 or in part, restores to the Commonwealth of Kentucky the authority to prohibit  
22 abortion.

23 (3) (a) No person may knowingly:

24 1. Administer to, prescribe for, procure for, or sell to any pregnant woman  
25 any medicine, drug, or other substance with the specific intent of  
26 causing or abetting the termination of the life of an unborn human being;

27 or

- 1           2. Use or employ any instrument or procedure upon a pregnant woman  
2           with the specific intent of causing or abetting the termination of the life  
3           of an unborn human being.
- 4           (b) Any person who violates paragraph (a) of this subsection shall be guilty of a  
5           Class D felony.
- 6           (4) The following shall not be a violation of subsection (3) of this section:
- 7           (a) For a licensed physician to perform a medical procedure necessary in  
8           reasonable medical judgment to prevent the death or substantial risk of death  
9           due to a physical condition, or to prevent the serious, permanent impairment  
10          of a life-sustaining organ of a pregnant woman. However, the physician shall  
11          make reasonable medical efforts under the circumstances to preserve both the  
12          life of the mother and the life of the unborn human being in a manner  
13          consistent with reasonable medical practice; ~~or~~
- 14          (b) Medical treatment provided to the mother by a licensed physician which  
15          results in the accidental or unintentional injury or death to the unborn human  
16          being; or
- 17          (c) An abortion is performed or induced on a pregnant woman who is  
18          reasonably believed to be pregnant as the result of rape or incest.
- 19          (5) Nothing in this section may be construed to subject the pregnant mother upon  
20          whom any abortion is performed or attempted to any criminal conviction and  
21          penalty.
- 22          (6) Nothing in this section may be construed to prohibit the sale, use, prescription, or  
23          administration of a contraceptive measure, drug, or chemical, if it is administered  
24          prior to the time when a pregnancy could be determined through conventional  
25          medical testing and if the contraceptive measure is sold, used, prescribed, or  
26          administered in accordance with manufacturer instructions.
- 27          (7) The provisions of this section shall be effective relative to the appropriation of

1 Medicaid funds, to the extent consistent with any executive order by the President  
2 of the United States, federal statute, appropriation rider, or federal regulation that  
3 sets forth the limited circumstances in which states must fund abortion to remain  
4 eligible to receive federal Medicaid funds pursuant to 42 U.S.C. secs. 1396 et seq.

5 ➔Section 12. KRS 311.7735 is amended to read as follows:

6 (1) An abortion-inducing drug as defined in KRS 311.7731 shall not be provided  
7 to a pregnant patient without the informed consent of the patient. Informed  
8 consent shall be obtained at least twenty-four (24) hours before the abortion-  
9 inducing drug is provided to a pregnant patient, except if **the pregnant**  
10 **woman is reasonably believed to be pregnant as the result of rape or incest,**  
11 **or if,** in the reasonable medical judgment of the qualified physician,  
12 compliance with this subsection would pose a risk of:

13 (a) The death of the pregnant patient; or

14 (b) The substantial and irreversible physical impairment of a major bodily  
15 function, not including psychological or emotional conditions, of the pregnant  
16 patient.

17 (2) A qualified physician shall use a form created by the Cabinet for Health and Family  
18 Services to obtain the consent required prior to providing an abortion-inducing drug  
19 as defined in KRS 311.7731 and submit the completed form to the cabinet.

20 (3) A consent form is not valid and consent is not sufficient, unless:

21 (a) The patient initials each entry, list, description, or declaration required to be  
22 on the consent form;

23 (b) The patient signs the consent statement; and

24 (c) The qualified physician signs the qualified physician declaration.

25 (4) The consent form shall include but is not limited to the following:

26 (a) The probable gestational age of the unborn child as determined by both  
27 patient history and by ultrasound results used to confirm gestational age;

- 1 (b) A detailed description of the steps to complete the drug-induced abortion;
- 2 (c) A detailed list of the risks related to the specific abortion-inducing drug as  
3 defined in KRS 311.7731 or drugs to be used, including potential  
4 complications and adverse events as defined in KRS 311.7731;
- 5 (d) If the pregnant patient was Rh negative, the pregnant patient was provided  
6 with an Rh negative information fact sheet and offered treatment with the  
7 prevailing medical standard of care to prevent harmful fetal or child outcomes  
8 or Rh incompatibility in future pregnancies;
- 9 (e) That the risks of complications from a medication abortion, including  
10 incomplete abortion, increase with advancing gestational age;
- 11 (f) That it may be possible to reverse the effects of the abortion-inducing drug if  
12 desired but that this should be done as soon as possible;
- 13 (g) That the patient may see the remains of the unborn child in the process of  
14 completing the abortion;
- 15 (h) That initial studies suggest that children born after reversing the effects of the  
16 abortion-inducing drug mifeprax/mifepristone have no greater risk of birth  
17 defects than the general population;
- 18 (i) That initial studies suggest that there is no increased risk of maternal mortality  
19 after reversing the effects of the abortion-inducing drug  
20 mifeprax/mifepristone;
- 21 (j) That information on and assistance with reversing the effects of abortion-  
22 inducing drugs are available in the state-prepared materials and on the  
23 cabinet's website~~[Web site]~~;
- 24 (k) An "acknowledgment of risks and consent statement" which the pregnant  
25 patient shall sign. The pregnant patient shall initial by each statement and the  
26 statement shall include but is not limited to the following declarations:
- 27 1. That the pregnant patient understands that the abortion-inducing drug

- 1 regimen or procedure is intended to end the pregnancy and will result in  
2 the death of the unborn child;
- 3 2. That the pregnant patient is not being forced to have an abortion, has the  
4 choice not to have the abortion, and may withdraw consent to the  
5 abortion-inducing drug regimen even after it has been provided;
- 6 3. That the pregnant patient understands that the abortion-inducing drug to  
7 be provided has specific risks and may result in specific complications;
- 8 4. That the pregnant patient has been given the opportunity to ask  
9 questions about the pregnancy, the development of the unborn child,  
10 alternatives to abortion, the abortion-inducing drug or drugs to be used,  
11 and the risks and complications possible when abortion-inducing drugs  
12 are provided;
- 13 5. That the pregnant patient was specifically told that information on the  
14 potential ability of qualified medical professionals to reverse the effects  
15 of a drug-induced abortion is available and where to obtain information  
16 for assistance in locating a medical professional that can aid in the  
17 reversal of a drug-induced abortion;
- 18 6. That the pregnant patient has been provided access to printed materials  
19 on informed consent for abortion;
- 20 7. That the pregnant patient has been given the name and phone number of  
21 the associated physician who has agreed to provide medical care and  
22 treatment in the event of complications associated with the abortion-  
23 inducing drug regimen or procedure;
- 24 8. That the qualified physician will schedule an in-person follow-up visit  
25 for the patient for approximately seven (7) to fourteen (14) days after  
26 providing the abortion-inducing drug or drugs to confirm that the  
27 pregnancy is completely terminated and to assess any degree of bleeding

- 1                   and other complications;
- 2           9. That the pregnant patient has received or been given sufficient
- 3           information to give informed consent to the abortion-inducing drug
- 4           regimen or procedure; and
- 5           10. That the patient has a private right of action to sue the qualified
- 6           physician under the laws of Kentucky if the patient feels coerced or
- 7           misled prior to obtaining an abortion;
- 8           (l) A qualified physician's declaration that states that the qualified physician has
- 9           explained the abortion-inducing drug or drugs to be provided, has provided all
- 10          of the information required in paragraph (k) of this subsection, and has
- 11          answered all of the woman's questions, shall be signed by the qualified
- 12          physician; and
- 13          (m) If prescribing for the purpose of inducing an abortion, a qualified physician
- 14          shall include the following on the prescription for an abortion-inducing drug:
- 15          "For The Purpose of Abortion Inducement".

16          ➔Section 13. KRS 311.7737 is amended to read as follows:

- 17          (1) Nothing in KRS 311.7731 to 311.7739 shall be construed as creating or recognizing
- 18          a right to abortion.
- 19          (2) It is not the intention of KRS 311.7731 to 311.7739 to make lawful an abortion that
- 20          is otherwise unlawful.

21          ~~[(3) KRS 311.7731 to 311.7739 or any state or federal laws to the contrary, abortion-~~

22          ~~inducing drugs as defined in KRS 311.7731 shall not be provided in any school~~

23          ~~facility or on state grounds, including but not limited to elementary and secondary~~

24          ~~schools and institutions of higher education in Kentucky.]~~

25          ➔Section 14. KRS 311.782 is amended to read as follows:

- 26          (1) No person shall intentionally perform or induce or intentionally attempt to perform
- 27          or induce an abortion on a pregnant woman when the probable gestational age of

1 the unborn child is fifteen (15) weeks or greater.

2 (2) It shall be an affirmative defense to a charge under subsection (1) of this section  
3 that the abortion was intentionally performed or induced or intentionally attempted  
4 to be performed or induced by a physician and that the physician determined, in the  
5 physician's reasonable medical judgment, based on the facts known to the physician  
6 at that time, that ~~either of the following applied~~:

7 (a) The probable gestational age of the unborn child was less than fifteen (15)  
8 weeks; ~~or~~

9 (b) The abortion was necessary to prevent the death of the pregnant woman or to  
10 avoid a serious risk of the substantial and irreversible impairment of a major  
11 bodily function of the pregnant woman. No abortion shall be necessary if it is  
12 based on a claim or diagnosis that the pregnant woman will engage in conduct  
13 that would result in her death or in substantial and irreversible impairment of  
14 a major bodily function or if it is based on any reason related to her mental  
15 health; or

16 (c) The pregnant woman is reasonably believed to be pregnant as the result of  
17 rape or incest.

18 (3) (a) Except when a medical emergency exists that prevents compliance with KRS  
19 311.783, the affirmative defense set forth in subsection (2)(a) of this section  
20 does not apply unless the physician who intentionally performs or induces or  
21 intentionally attempts to perform or induce the abortion makes a  
22 determination of the probable gestational age of the unborn child as required  
23 by KRS 311.783(1) or relied upon such a determination made by another  
24 physician and certifies in writing, based on the results of the tests performed,  
25 that in the physician's reasonable medical judgment the unborn child's  
26 probable gestational age is less than fifteen (15) weeks.

27 (b) Except when a medical emergency exists that prevents compliance with one

1 (1) or more of the following conditions, the affirmative defense set forth in  
2 subsection (2)(b) of this section does not apply unless the physician who  
3 intentionally performs or induces or intentionally attempts to perform or  
4 induce the abortion complies with all of the following conditions:

- 5 1. The physician who intentionally performs or induces or intentionally  
6 attempts to perform or induce the abortion certifies in writing that, in the  
7 physician's reasonable medical judgment, based on the facts known to  
8 the physician at that time, the abortion is necessary to prevent the death  
9 of the pregnant woman or to avoid a serious risk of the substantial and  
10 irreversible impairment of a major bodily function of the pregnant  
11 woman;
- 12 2. A different physician not professionally related to the physician  
13 described in subparagraph 1. of this paragraph certifies in writing that,  
14 in that different physician's reasonable medical judgment, based on the  
15 facts known to that different physician at that time, the abortion is  
16 necessary to prevent the death of the pregnant woman or to avoid a  
17 serious risk of the substantial and irreversible impairment of a major  
18 bodily function of the pregnant woman;
- 19 3. The physician intentionally performs or induces or intentionally  
20 attempts to perform or induce the abortion in a hospital or other health  
21 care facility that has appropriate neonatal services for premature infants;
- 22 4. The physician who intentionally performs or induces or intentionally  
23 attempts to perform or induce the abortion terminates or attempts to  
24 terminate the pregnancy in the manner that provides the best opportunity  
25 for the unborn child to survive, unless that physician determines, in the  
26 physician's reasonable medical judgment, based on the facts known to  
27 the physician at that time, that the termination of the pregnancy in that

1 manner poses a greater risk of death of the pregnant woman or a greater  
2 risk of the substantial and irreversible impairment of a major bodily  
3 function of the pregnant woman than would other available methods of  
4 abortion;

5 5. The physician certifies in writing the available method or techniques  
6 considered and the reasons for choosing the method or technique  
7 employed; and

8 6. The physician who intentionally performs or induces or intentionally  
9 attempts to perform or induce the abortion has arranged for the  
10 attendance in the same room in which the abortion is to be performed or  
11 induced or attempted to be performed or induced at least one (1) other  
12 physician who is to take control of, provide immediate medical care for,  
13 and take all reasonable steps necessary to preserve the life and health of  
14 the unborn child immediately upon the child's complete expulsion or  
15 extraction from the pregnant woman.

16 (4) The state Board of Medical Licensure shall revoke a physician's license to practice  
17 medicine in this state if the physician violates or fails to comply with this section.

18 (5) Any physician who intentionally performs or induces or intentionally attempts to  
19 perform or induce an abortion on a pregnant woman with actual knowledge that  
20 none~~neither~~ of the affirmative defenses set forth in subsection (2) of this section  
21 applies, or with a heedless indifference as to whether either affirmative defense  
22 applies, is liable in a civil action for compensatory and punitive damages and  
23 reasonable attorney's fees to any person, or the representative of the estate of any  
24 person including but not limited to an unborn child, who sustains injury, death, or  
25 loss to person or property as the result of the performance or inducement or the  
26 attempted performance or inducement of the abortion. In any action under this  
27 subsection, the court also may award any injunctive or other equitable relief that the

1 court considers appropriate.

2 (6) A pregnant woman on whom an abortion is intentionally performed or induced or  
3 intentionally attempted to be performed or induced in violation of subsection (1) of  
4 this section is not guilty of violating subsection (1) of this section or of attempting  
5 to commit, conspiring to commit, or complicity in committing a violation of  
6 subsection (1) of this section.

7 ➔Section 15. KRS 311.787 is amended to read as follows:

8 (1) As used in this section:

9 (a) "Bodily dismemberment, crushing, or human vivisection" means a procedure  
10 in which a person, with the purpose of causing the death of an unborn child,  
11 dismembers the living unborn child and extracts portions, pieces, or limbs of  
12 the unborn child from the uterus through the use of clamps, grasping forceps,  
13 tongs, scissors, or a similar instrument that, through the convergence of two  
14 (2) rigid levers, slices, crushes, or grasps, or performs any combination of  
15 those actions on, any portion, piece, or limb of the unborn child's body to cut  
16 or separate the portion, piece, or limb from the body. The term includes a  
17 procedure that is used to cause the death of an unborn child and in which  
18 suction is subsequently used to extract portions, pieces, or limbs of the unborn  
19 child after the unborn child's death;

20 (b) "Medical emergency" has the same meaning as in KRS 311.720;

21 (c) "Probable gestational age" has the same meaning as in KRS 311.720; and

22 (d) "Unborn child" has the same meaning as in KRS 311.781.

23 (2) No person shall intentionally perform or induce or attempt to perform or induce an  
24 abortion on a pregnant woman:

25 (a) That will result in the bodily dismemberment, crushing, or human vivisection  
26 of the unborn child; and

27 (b) When the probable gestational age of the unborn child is eleven (11) weeks or

1                   greater;

2           except in the case of a medical emergency, *or when the pregnant woman is*

3           *reasonably believed to be pregnant as the result of rape or incest.*

4 (3) A pregnant woman on whom an abortion is performed or induced or attempted to

5           be performed or induced in violation of subsection (2) of this section is not guilty of

6           violating subsection (2) of this section or of attempting to commit, conspiring to

7           commit, or complicity in committing a violation of subsection (2) of this section.